

Corporate Securities Law

November 3, 2015

Offering Memorandum Exemption Finalized for Ontario

Development of the private placement exemptions continues, as the Canadian Securities Administrators (CSA) have finalized amendments to National Instrument 45-106 *Prospectus Exemptions* (the “**Amendments**”) relating to the offering memorandum exemption (the “**OM Exemption**”). The Amendments had initially been proposed in March of 2014 (see our April 1, 2014 Update, *Four New Private Placement Exemptions Proposed*), and introduce the OM Exemption into Ontario for the first time for issuers other than investment funds.

The OM Exemption is intended to allow issuers to access capital from a wider range of investors than are accessible under other prospectus exemptions, without incurring the cost of filing a prospectus. Issuers distributing under the OM Exemption must provide investors with an offering memorandum that includes prescribed disclosure that is less comprehensive than what is required in a prospectus. Because distributions under the OM Exemption are exempt from the prospectus requirements, securities distributed under an offering memorandum are not freely tradeable.

The OM Exemption includes the following requirements:

- non-reporting issuers must provide audited financial statements, an annual notice on how the proceeds raised under the OM Exemption have been used and notice of a discontinuation of the business, a change in industry or a change of control of the issuer;
- marketing materials used in distributions under the OM Exemption must be incorporated by reference into the offering memorandum; and
- individual investors are subject to investment limits of \$30,000 for eligible investors (who meet certain income or asset thresholds) and \$10,000 for non-eligible investors over any given twelve-month period.

Subject to ministerial approval, the Amendments will come into force in Ontario on January 13, 2016 and in other participating jurisdictions on April 30, 2016.

For further information regarding the development of the private placement exemptions and corporate finance in general, please contact any member of our Corporate Securities Group.